

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2009-1063-EAQ-E **TCEQ ID:** RN104004593 **CASE NO.:** 37881

RESPONDENT NAME: Capital Metropolitan Transportation Authority

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input checked="" type="checkbox"/> EDWARDS AQUIFER
<p>SITE WHERE VIOLATION(S) OCCURRED: Capital Metro Transportation Authority North Operations & Maintenance Facility, 9315 McNeil Road, Austin, Travis County</p> <p>TYPE OF OPERATION: Bus and rail maintenance facility</p> <p>SMALL BUSINESS: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on November 2, 2009. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Carlie Konkol, Enforcement Division, Enforcement Team 3, MC R14, (361) 825-3422; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387 Respondent: Mr. Bill Le Jeune, Rail Department Manager, Capital Metropolitan Transportation Authority, 2910 East 5th Street, Austin, Texas 78702 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: April 30, 2009</p> <p>Date of NOV/NOE Relating to this Case: May 22, 2009 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>WATER</p> <p>Failure to obtain approval of an Aboveground Storage Tank ("AST") Facility Plan prior to beginning a regulated activity over an Edwards Aquifer Recharge Zone. Specifically, the investigator observed a 4,000 gallon AST in use located above the Edwards Aquifer Transition Zone without an approved AST Facility Plan [30 TEX. ADMIN. CODE § 213.4(a)(1)].</p>	<p>Total Assessed: \$750</p> <p>Total Deferred: \$150 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$600</p> <p>Site Compliance History Classification <input checked="" type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>The Respondent achieved compliance through the approval of an AST Facility Plan on May 22, 2009.</p>

Additional ID No(s): 1104080901B



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

ICEQ	DATES	Assigned	15-Jun-2009	Screening	1-Jul-2009	EPA Due	
	PCW		1-Jul-2009				

RESPONDENT/FACILITY INFORMATION	
Respondent	Capital Metropolitan Transportation Authority
Reg. Ent. Ref. No.	RN104004593
Facility/Site Region	11-Austin
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	37881	No. of Violations	1
Docket No.	2009-1063-EAQ-E	Order Type	1660
Media Program(s)	Edwards Aquifer	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Carlie Konkol
Admin. Penalty \$ Limit Minimum	\$0	EC's Team	Enforcement Team 3
Maximum	\$10,000		

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$1,000
ADJUSTMENTS (+/-) TO SUBTOTAL 1		
Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.		
Compliance History	0.0% Enhancement	Subtotals 2, 3, & 7 \$0
Notes	No adjustment is recommended due to Average Performer Classification.	
Culpability	No 0.0% Enhancement	Subtotal 4 \$0
Notes	The Respondent does not meet the culpability criteria.	
Good Faith Effort to Comply Total Adjustments		Subtotal 5 \$250
Economic Benefit	0.0% Enhancement*	Subtotal 6 \$0
Total EB Amounts	\$7	
Approx. Cost of Compliance	\$1,850	*Capped at the Total EB \$ Amount
SUM OF SUBTOTALS 1-7	Final Subtotal	\$750
OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment \$0
Reduces or enhances the Final Subtotal by the indicated percentage.		
Notes		
	Final Penalty Amount	\$750
STATUTORY LIMIT ADJUSTMENT		Final Assessed Penalty \$750
DEFERRAL	20.0% Reduction	Adjustment -\$150
Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)		
Notes	Deferral offered for expedited settlement.	
PAYABLE PENALTY		\$600

Screening Date: 1-Jul-2009	Docket No.: 2009-1063-EAQ-E	PGW
Respondent: Capital Metropolitan Transportation Authority		<i>Policy Revision 2 (September 2002)</i>
Case ID No.: 37881		<i>PCW Revision October 30, 2008</i>
Reg. Ent. Reference No.: RN104004593		
Media [Statute]: Edwards Aquifer		
Enf. Coordinator: Carlie Konkol		

Compliance History Worksheet

>> **Compliance History Site Enhancement (Subtotal 2)**

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action <i>(number of NOVs meeting criteria)</i>	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability <i>(number of orders meeting criteria)</i>	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government <i>(number of judgments or consent decrees meeting criteria)</i>	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government <i>(number of counts)</i>	0	0%
Emissions	Chronic excessive emissions events <i>(number of events)</i>	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 <i>(number of audits for which notices were submitted)</i>	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 <i>(number of audits for which violations were disclosed)</i>	0	0%

Please Enter Yes or No

Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

>> **Repeat Violator (Subtotal 3)**

No

Adjustment Percentage (Subtotal 3) 0%

>> **Compliance History Person Classification (Subtotal 7)**

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> **Compliance History Summary**

Compliance History Notes

No adjustment is recommended due to Average Performer Classification.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 0%

Screening Date	1-Jul-2009	Docket No.	2009-1083-EAQ-E	PCW
Respondent	Capital Metropolitan Transportation Authority			<i>Policy Revision 2 (September 2002)</i>
Case ID No.	37881			<i>PCW Revision October 30, 2008</i>
Reg. Ent. Reference No.	RN104004593			
Media [Statute]	Edwards Aquifer			
Enf. Coordinator	Carlie Konkol			
Violation Number	1			

Rule Cite(s)	30 Tex. Admin. Code § 213.4(a)(1)
Violation Description	Failed to obtain approval of an Aboveground Storage Tank ("AST") Facility Plan prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone. Specifically, the investigator observed a 4,000 gallon AST located above the Edwards Aquifer Transition Zone without an AST Facility Plan.
Base Penalty	\$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Major	Moderate	Minor	Percent	0%
	Actual					
	Potential					

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent	10%
		X				

Matrix Notes

100% of the permit requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events: 1 22 Number of violation days

<i>mark only one with an x</i>	daily	
	weekly	
	monthly	X
	quarterly	
	semiannual	
	annual	
	single event	

Violation Base Penalty \$1,000

One monthly event is recommended from the April 30, 2009 investigation date to the May 22, 2009 compliance date.

Good Faith Efforts to Comply

	25.0% Reduction	\$250
	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary	X	
N/A	(mark with x)	

Notes

The Respondent returned to compliance May 22, 2009.

Violation Subtotal \$750

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount: \$7	Violation Final Penalty Total: \$750
This violation Final Assessed Penalty (adjusted for limits): \$750	

Economic Benefit Worksheet

Respondent: Capital Metropolitan Transportation Authority

Case ID No.: 37881

Reg. Ent. Reference No.: RN104004593

Media: Edwards Aquifer

Violation No.: 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No complis or \$							

Delayed Costs

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)	\$1,650	30-Apr-2009	22-May-2009	0.06	\$0	\$7	\$7
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost reflects the amount to prepare, submit, and obtain approval of an AST Facility Plan for an AST. Date required is the investigation date and the final date is the date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,650

TOTAL:

\$7

Compliance History Report

Customer/Respondent/Owner-Operator: CN602490906 Capital Metropolitan Transportation Authority Classification: AVERAGE Rating: 2.73

Regulated Entity: RN104004593 CAPITAL METRO TRANSPORTATION AUTHORITY NORTH OPERATIONS & MAINTENANCE FACILITY Classification: HIGH Site Rating: 0.00

ID Number(s):	AIR NEW SOURCE PERMITS	PERMIT	9161
	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	TH0036N
	AIR NEW SOURCE PERMITS	AFS NUM	4845300019
	AIR NEW SOURCE PERMITS	REGISTRATION	84367
	VOLUNTARY CLEANUP PROGRAM	ID NUMBER	1653
	EDWARDS AQUIFER	REGISTRATION	11-04080901
	EDWARDS AQUIFER	REGISTRATION	11-04080901A
	EDWARDS AQUIFER	REGISTRATION	11-04080901B
	EDWARDS AQUIFER	REGISTRATION	1104080901B
	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	4249
	STORMWATER	PERMIT	TXRNEV192

Location: 9315 MCNEIL RD, AUSTIN, TX, 78758

TCEQ Region: REGION 11 - AUSTIN

Date Compliance History Prepared: June 30, 2009

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: June 30, 2004 to June 30, 2009

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
 Name: Carlie Konkol Phone: (361) 825-3422

Site Compliance History Components

- | | |
|--|-----|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes |
| 2. Has there been a (known) change in ownership/operator of the site during the compliance period? | No |
| 3. If Yes, who is the current owner/operator? | N/A |
| 4. If Yes, who was/were the prior owner(s)/operator(s) ? | N/A |
| 5. When did the change(s) in owner or operator occur? | N/A |
| 6. Rating Date: 9/1/2008 Repeat Violator: NO | |

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1	08/25/2004	(291276)
2	10/29/2004	(338182)
3	06/08/2009	(745244)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
N/A
- F. Environmental audits.
N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
CAPITAL METROPOLITAN
TRANSPORTATION AUTHORITY
RN104004593

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BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2009-1063-EAQ-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Capital Metropolitan Transportation Authority ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a bus and rail maintenance facility at 9315 McNeil Road in Austin, Travis County, Texas (the "Facility").
2. The Respondent has committed any other act or engaged in any other activity which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution of any water in the state under TEX. WATER CODE ch. 26.
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about May 27, 2009.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Seven Hundred Fifty Dollars (\$750) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent

has paid Six Hundred Dollars (\$600) of the administrative penalty and One Hundred Fifty Dollars (\$150) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that on May 22, 2009, the Respondent achieved compliance through the approval of an Aboveground Storage Tank ("AST") Facility Plan.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Facility, the Respondent is alleged to have failed to obtain approval of an AST Facility Plan prior to beginning a regulated activity over an Edwards Aquifer Recharge Zone, in violation of 30 TEX. ADMIN. CODE § 213.4(a)(1), as documented during an investigation conducted on April 30, 2009. Specifically, the investigator observed a 4,000 gallon AST in use located above the Edwards Aquifer Transition Zone without an approved AST Facility Plan.

III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Capital Metropolitan Transportation Authority, Docket No. 2009-1063-EAQ-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. The provisions of this Agreed Order shall apply to and be binding upon The Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
3. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
4. This Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes under this Agreed Order.
5. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

John Srdelin
For the Executive Director

9/30/2009
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

Fred William *FWB*
Signature

9/13/09
Date

Fred William
Name (Printed or typed)
Authorized Representative of
Capital Metropolitan Transportation Authority

President/CEO
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.